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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

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| ORGANIZED VILLAGE OF KAKE, <i>et al.</i> , |) | Case No. 1:20-cv-00011-SLG |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | JOINT STATUS REPORT AND |
| |) | FEDERAL DEFENDANTS' |
| |) | MOTION TO EXTEND STAY |
| THOMAS VILSACK, in his official capacity |) | UNTIL JANUARY 15, 2022 |
| as Secretary of Agriculture, UNITED |) | |
| STATES DEPARTMENT OF |) | |
| AGRICULTURE; and UNITED STATES |) | |
| FOREST SERVICE |) | |
| |) | |
| Federal Defendants. |) | |
| |) | |
| |) | |
| |) | |
| |) | |

On September 1, 2021, Federal Defendants moved for a second extension of the original 120-day stay (ECF No. 17) until November 1, 2021, during the Office of Information and Regulatory Affairs (“OIRA”) review of a proposed rule concerning the Alaska Roadless Rule that Plaintiffs challenge in this case. ECF No. 34. The Court granted Federal Defendants’ motion on September 2, 2021, staying this case until November 1, and ordered the parties to file a joint status report regarding future proceedings in this case. ECF No. 35. The parties provide their respective positions to the Court:

Federal Defendants:

Federal Defendants wish to provide the Court with an update on the status of the agency’s review of Alaska Roadless Rule and request that the Court extend the stay until January 15, 2022.

On January 20, 2021, the White House issued a “Fact Sheet” identifying agency actions for review in accordance with Executive Order 13990 that included the “Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska, 85 Fed. Reg. 68688 (Oct. 29, 2020), *i.e.*, the “Alaska Roadless Rule,” challenged in this case. The U.S. Department of Agriculture (“USDA”) has reviewed the Alaska Roadless Rule and proposes to repeal or replace subpart E of 36 CFR § 294 exempting the Tongass National Forest from the 2001 Roadless Rule. In the Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions published on June 11, the agency set forth a timetable for publication of a notice of proposed rulemaking of August 2021.

In the previous status report, Defendants reported that the proposed rule was currently under review by OIRA. That review is nearing completion, and the White House Office of Management and Budget anticipates that a proposed rule will be published in the federal register in the upcoming weeks.

This Court has broad discretion to stay proceedings and defer judicial review and should do so here. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”). A continuation of the stay until a proposed rule is published is appropriate here, because it is likely to prevent the parties and the Court from undertaking work, such as the compilation of an administrative record, which would soon prove unnecessary. A further extension of the stay will not prejudice the Court or the parties. The Forest Service does not anticipate that it will authorize any projects or activities in reliance on the Alaska Roadless Rule prior to January 15, 2022. In the event it does, the government has already agreed to provide the parties and the Court with 30 days’ advance notice and will continue to do so during the extended stay. *See* ECF No. 13.

Federal Defendants propose that by January 15, 2022, or within seven days of the publication of the notice of proposed rulemaking –whichever is earlier—the parties submit status reports regarding future proceedings in this case, including, as appropriate, whether the stay should be extended or proposed dates by which a dismissal or remand motion are to be filed.

Plaintiffs do not oppose Federal Defendants' request to extend the stay.

Defendant Intervenor:

This is the Federal Defendants' fourth request for an extension which has so far been approved from February 23, 2021, through November 1, 2021. The Federal Defendants continuously assert that they do not anticipate authorizing "any projects or activities in reliance on the Alaska Roadless Rule" despite their reliance on the validity of the rule in other litigation. *State of Alaska, et al., v. U.S.D.A, et al*, 17-5260, D.C. Cir. The Federal Defendants have repeatedly reported that the notice of proposed rulemaking is coming soon. These superficial notices are insufficient to support another extension. The Plaintiffs should be required to timely prosecute their claims or dismiss them entirely. Likewise, the Federal Defendants should be required to provide more details as to the proposed rulemaking under consideration and how it impacts this case before receiving additional extensions. At minimum, the Federal Defendants should be required to inform the Court and the parties whether the Federal Defendants will rely on the Record of Decision or the Environmental Impact Statement (EIS) for the Alaska Roadless Rule challenged in this case or whether there will be a new or supplemental EIS or some other process. The Federal Defendants present course of filing serial extensions has granted the functional equivalent of the preliminary injunction requested by the Plaintiffs. The Federal Defendants' the serial extensions and the delays in the rulemaking create uncertainty and hinder the economic resurgence in Southeast Alaska that is a key goal of the Alaska Roadless

Status Report and Mot. to Extend Stay

Organized Village of Kake, et al. v. Vilsack, et al., No. 1:20-cv-00011-

SLG

Rule.

Respectfully submitted on this 1st day of November, 2021.

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